



June 6, 2001

Mr. Dennis P. Duffy
General Counsel
University of Houston System
311 E. Cullen Building
Houston, Texas 77204-2162

OR2001-2354

Dear Mr. Duffy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148086.

The University of Houston (the “university”) received a request for the names of individuals who served on a specified selection committee, communications of specified members of the search committee regarding the selection of candidates, and copies of all grievances or complaints filed against four individuals. You have released the complaints filed by the requestor. The university received an additional request for a copy of the advertisement for the position, the names of newspapers and journals in which the ads were placed, and a list of applicants. You state that you have released copies of the advertisements and will release the list of applicants with certain information redacted. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that section 552.022(a) provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Exhibit D4 contains information that is subject to section 552.022(a)(3). You claim that the information in Exhibit D4 is excepted under section 552.103 of the Government Code. Section 552.103, however, is a discretionary exception under the Public Information Act and is, therefore, not "other law" that makes the submitted information confidential. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential). Therefore, you must release the marked documents in Exhibit D4 under section 552.022(a)(3) of the Government Code.

You contend that Exhibits D1-D4 are excepted under section 552.103 of the Government Code. Section 552.103(a) of the Government Code provides:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). Further, litigation must be pending or reasonably anticipated on the date the requestor applies to the public information officer for access. Gov't Code § 552.103(c).

You have supplied this office with a copy of a complaint of discrimination filed with the Equal Employment Opportunity Commission ("EEOC") by the requestor. This office has stated that a pending EEOC complaint indicates that litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). Thus, you have shown that litigation is reasonably anticipated. Having reviewed the submitted information, we conclude that the requested information relates to the litigation.

We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). We note that the submitted information contains three letters that were sent to the requestor. We have marked the documents in Exhibit D2 that you must release because the opposing party

has seen the document. The university may withhold Exhibits D1 and D3 in their entirety and the remaining documents in Exhibits D2 and D4 under section 552.103.¹ We note that the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

You contend that the applicants' salary information in Exhibit D5 is excepted under section 552.101 in conjunction with common law privacy. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Id.* However, we have previously held that information regarding a job applicant's salary is not protected under common law privacy. *See* Open Records Decision No. 455 at 7, 9 (1987). Accordingly, you may not withhold the salary information under section 552.101 in conjunction with common law privacy. Therefore, you must release the salary information.

The submitted information in Exhibit D5 also includes the home addresses and home telephone numbers of the applicants. Section 552.117(1) excepts from disclosure information that relates to the home addresses, home telephone numbers, social security numbers, and family member information of employees of a governmental body who request that this information remain confidential under section 552.024 of the Government Code. *But see* Open Records Decision No. 455 (1987) (finding that statutory predecessor to section 552.117 does not protect home addresses and home telephone numbers of applicants). You inform us that two of the applicants for the position were university employees. You have submitted to this office information that demonstrates that the university employees and the successful candidate made a timely section 552.024 election to keep their home addresses, home telephone numbers, social security numbers, and family membership information confidential. Thus, you must withhold the home addresses and home telephone numbers of the employees under section 552.117(1) of the Government Code. We have marked the information that must be withheld under section 552.117(1) of the Government Code.

In conclusion, you must release the marked information in Exhibit D4 under section 552.022(a)(3) of the Government Code. You must also release the letters in Exhibit D2 which the requestor has already seen. Further, you may not withhold the salary information in Exhibit D5 under section 552.101 in conjunction with common law privacy. However,

¹Having found the information in Exhibit D2 excepted under section 552.103, we need not address the applicability of section 552.117(1) to this information. We note that the requestor has a special right of access to his home address and home telephone number under section 552.023 of the Government Code.

you must withhold the marked information in Exhibit D5 under section 552.117(1) of the Government Code. You may withhold the remaining submitted information under section 552.103 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

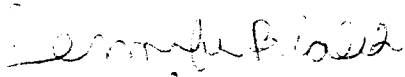
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 148086

Encl: Submitted documents

cc: Mr. Johnny Centineo
12003 Bourgeois Forest Drive
Houston, Texas 77066
(w/o enclosures)